

§ 1.417

Authority for international applications filed in the United States Receiving Office and in other Receiving Offices as may be agreed upon by the Director, in accordance with agreement between the Patent and Trademark Office and the International Bureau.

(b) The United States Patent and Trademark Office, when acting as an International Preliminary Examining Authority, will be identified by the full title “United States International Preliminary Examining Authority” or by the abbreviation “IPEA/US.”

(c) The major functions of the International Preliminary Examining Authority include:

(1) Receiving and checking for defects in the Demand;

(2) Forwarding Demands in accordance with PCT Rule 59.3;

(3) Collecting the handling fee for the International Bureau and the preliminary examination fee for the United States International Preliminary Examining Authority;

(4) Informing applicant of receipt of the Demand;

(5) Considering the matter of unity of invention;

(6) Providing an international preliminary examination report which is a non-binding opinion on the questions of whether the claimed invention appears: to be novel, to involve an inventive step (to be nonobvious), and to be industrially applicable; and

(7) Transmitting the international preliminary examination report to applicant and the International Bureau.

[52 FR 20047, May 28, 1987, as amended at 63 FR 29617, June 1, 1998]

§ 1.417 Submission of translation of international publication.

The submission of an English language translation of the publication of an international application pursuant to 35 U.S.C. 154(d)(4) must clearly identify the international application to which it pertains (§ 1.5(a)) and be clearly identified as a submission pursuant to 35 U.S.C. 154(d)(4). Otherwise, the submission will be treated as a filing under 35 U.S.C. 111(a). Such submissions should be marked “Mail Stop PCT.”

[68 FR 71007, Dec. 22, 2003]

37 CFR Ch. I (7–1–12 Edition)

§ 1.419 Display of currently valid control number under the Paperwork Reduction Act.

(a) Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the collection of information in this subpart has been reviewed and approved by the Office of Management and Budget under control number 0651–0021.

(b) Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget control number. This section constitutes the display required by 44 U.S.C. 3512(a) and 5 CFR 1320.5(b)(2)(i) for the collection of information under Office of Management and Budget control number 0651–0021 (see 5 CFR 1320.5(b)(2)(ii)(D)).

[63 FR 29617, June 1, 1998]

WHO MAY FILE AN INTERNATIONAL APPLICATION

§ 1.421 Applicant for international application.

(a) Only residents or nationals of the United States of America may file international applications in the United States Receiving Office. If an international application does not include an applicant who is indicated as being a resident or national of the United States of America, and at least one applicant:

(1) Has indicated a residence or nationality in a PCT Contracting State, or

(2) Has no residence or nationality indicated, applicant will be so notified and, if the international application includes a fee amount equivalent to that required by § 1.445(a)(4), the international application will be forwarded for processing to the International Bureau acting as a Receiving Office (see also § 1.412(c)(6)).

(b) Although the United States Receiving Office will accept international applications filed by any resident or national of the United States of America for international processing, for the

purposes of the designation of the United States, an international application must be filed, and will be accepted by the Patent and Trademark Office for the national stage only if filed, by the inventor or as provided in §§ 1.422 or 1.423. Joint inventors must jointly apply for an international application.

(c) For the purposes of designations other than the United States, international applications may be filed by the assignee or owner.

(d) A registered attorney or agent of the applicant may sign the international application Request and file the international application for the applicant. A separate power of attorney from each applicant may be required.

(e) Any indication of different applicants for the purpose of different Designated Offices must be shown on the Request portion of the international application.

(f) Requests for changes in the indications concerning the applicant, agent, or common representative of an international application shall be made in accordance with PCT Rule 92*bis* and may be required to be signed by all applicants.

(g) Requests for withdrawals of the international application, designations, priority claims, the Demand, or elections shall be made in accordance with PCT Rule 90*bis* and must be signed by all applicants. A separate power of attorney from the applicants will be required for the purposes of any request for a withdrawal in accordance with PCT Rule 90*bis* which is not signed by all applicants. The submission of a separate power of attorney may be excused upon the request of another applicant where one or more inventors cannot be found or reached after diligent effort. Such a request must be accompanied by a statement explaining to the satisfaction of the Director the lack of the signature concerned.

[43 FR 20466, May 11, 1978, as amended at 53 FR 47810, Nov. 28, 1988; 60 FR 21440, May 2, 1995; 68 FR 59887, Oct. 20, 2003; 68 FR 67805, Dec. 4, 2003]

§ 1.422 When the inventor is dead.

In case of the death of the inventor, the legal representative (executor, ad-

ministrator, etc.) of the deceased inventor may file an international application which designates the United States of America.

§ 1.423 When the inventor is insane or legally incapacitated.

In case an inventor is insane or otherwise legally incapacitated, the legal representative (guardian, conservator, etc.) of such inventor may file an international application which designates the United States of America.

THE INTERNATIONAL APPLICATION

§ 1.431 International application requirements.

(a) An international application shall contain, as specified in the Treaty and the Regulations, a Request, a description, one or more claims, an abstract, and one or more drawings (where required). (PCT Art. 3(2) and section 207 of the Administrative Instructions.)

(b) An international filing date will be accorded by the United States Receiving Office, at the time of receipt of the international application, provided that:

(1) At least one applicant (§ 1.421) is a United States resident or national and the papers filed at the time of receipt of the international application so indicate (35 U.S.C. 361(a), PCT Art. 11(1)(i)).

(2) The international application is in the English language (35 U.S.C. 361(c), PCT Art. 11(1)(ii)).

(3) The international application contains at least the following elements (PCT Art. 11(1)(iii)):

(i) An indication that it is intended as an international application (PCT Rule 4.2);

(ii) The designation of at least one Contracting State of the International Patent Cooperation Union (§ 1.432);

(iii) The name of the applicant, as prescribed (note §§ 1.421–1.423);

(iv) A part which on the face of it appears to be a description; and

(v) A part which on the face of it appears to be a claim.

(c) Payment of the international filing fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) may be made in full at the time the international application papers required by